SINGLE BENCH

CF1002 (5)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION(C) NO. 5042 OF 2006

PETITIONER:

Dr. K.D. Bandhe, S/o- Shri Mahettar Bandhe, Aged About-55 Years, R/o- Village- Hardi, Post-Bodtara, Thesil- Lormi, Distt.-Bilaspur (C.G.)

VERSUS

RESPONDENT (S):

1. State of Chhattisgarh
   Through it's Secretary
   Department of Panchayat,
   D.K.S. Bhawan Raipur (C.G.)
2. Additional Collector, Bilaspur
   Distt. - Bilaspur (C.G.)
3. Sub Divisional Officer (Revenue)
   Lormi, Distt. Bilaspur (C.G.)
4. Thesildar,
   Lormi, Distt. Bilaspur (C.G.)
5. Gram Panchayat, Hardi
   Through It's Secretary
   Post-Bodtara, Thesil- Lormi, Distt.- Bilaspur (C.G.)

P.R. No. 505246
Presented by Shri Vinay Pandey
dated 12/9/06

RECEIVED-COPY
12/9/06
CLERK to A. G. BILASPUR

OATH COMMISSIONER
APARNA MALVIYA
CG/07/2002
10/09/06
Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS / CERTIORARI ETC. OR DIRECTION / ORDER IN THE LIKE NATURE.

AFR

(66)

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO.5042 OF 2006

DR. K.D.Bandhe

Vs.

State of Chhattisgarh and others

Shri Vinay Pandey, counsel for the petitioner.
Shri N.K.Agrawal, Dy. Advocate General for the State/respondents.

ORAL ORDER
(14th September, 2006)

SUNIL KUMAR SINHA, J

(1) The petitioner, who was an elected Sarpanch of Gram Panchayat, Hardi, has called in question the legality, validity and propriety of order dated 29.6.2006, passed by the Additional Collector, Bilaspur in a Panchayat Dispute (Reference) No.67/A-89(6)/2005-2006. By the aforesaid order, the Additional Collector has dismissed the Reference, made by the petitioner, challenging the validity of the motion of 'No Confidence', carried out under sub- Section (1) of Section 21 of the M.P. (C.G.) Panchayat Raj Avam Gram Swaraj Adhiniyam 1993, hereinafter referred to as 'the Act'.

(2) The brief facts are that the petitioner was an elected Sarpanch of Gram Panchayat, Hardi in the elections which took place in the year 2004-2005. It appears that a notice of no- confidence was submitted by the Panchas against the petitioner under Rule 3 of the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam 1994, hereinafter referred to as 'the Rule'. On receiving the notice of such motion, under sub-rule (1) of Rule 3,

67

the Prescribed Authority, after satisfying himself on the admissibility of the notice with reference to Section 21 (3), fixed a date of meeting regarding the said motion. The date was fixed as 12.6.2006. As per the averments of the writ petition, the aforesaid motion was passed, as 13 votes were given in favour of the motion and 2 votes were given against the motion and 2 other votes were declared invalid. The petitioner challenged the validity of this motion, carried out under sub-Section (1), by referring the dispute to the Collector. A copy of the dispute has been filed as Annexure P-5.

(3) A perusal of Annexure P-5 would show that many grounds, challenging the validity of the said motion were raised by the petitioner. When this matter came up for hearing before the Additional Collector, he dismissed the aforesaid dispute by passing a two lines order on 29.6.2006 in the following manner:

> "नियमानुसार हुए मतदान में सरपंच के विरूद्ध अविश्वास प्रस्ताव पारीत है । अविश्वास प्रस्ताव के पक्ष में 13 मत तथा विपक्ष में 02 मत तथा 02 मत निरंक है । अर्थात अविश्वास प्रस्ताव पूर्ण रूपेण पारीत है ।"

It is this order of the Additional Collector, passed in the said dispute, is challenged by the petitioner.

(4) Learned counsel for the petitioner submits that the order passed by the Additional Collector is a cryptic order, which does not reflect to the grounds raised by the petitioner in the dispute. His submission is that the said unreasoned order passed by the Collector is not in accordance with law and the same should be struck down.

(5) On the contrary, learned Dy. Advocate General argues on merits of the motion carried out and supported the outcome of the order. His

68

submission is that though the reasons are not recorded in the order, but the ultimate result arrived at by the Collector appears to be correct, because the motion was rightly carried out against the petitioner with a majority of 13 : 2 : 2 votes.

(6) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(7) Section 21 of the Panchayat Raj Adhiniyam deals with the provisions of no-confidence motion against the Sarpanch and Up-Sarpanch. Sub Section (1) of Section 21 provides that on a motion of no-confidence being passed by a resolution, passed by the majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith. Sub Section (2) of the said Section provides that notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him. It further provides that such meeting shall be convened in such manner as may be prescribed and shall be presided over by an officer of the Government as the Prescribed Authority may appoint. The Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting. Further sub-Section (3) provides that no-confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of –

(i) one year from the date on which the Sarpanch or Up-Sarpanch enter their respective office;

(ii) six months presiding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires;

(iii) one year from the date on which previous motion of no-confidence was rejected.

(8) It is thereafter, sub-Section (4) of Section 21 was further brought and a provision regarding reference of a dispute was also added along with the above provisions in Section 21. The placement of word like "dispute" in sub-Section (4) of Section 21 by the legislature and calling for a decision on the said dispute is self evident to raise a presumption that if some controversial point with relation to passing of a no-confidence motion is raised before the Collector, the Collector has to decide it by applying the correct law to the matter raised and he has to pass an order so as to settle down the dispute raised by the party concerned. One more portion of the statute which also receives importance,on its grafting,is that the decision so taken by the Collector on the dispute referred to him shall be final. Such expression further makes it clear that the disputes, which are raised before the Collector are to be decided by him in a positive manner so as to reach a finality and they are not to be disposed of by passing a superficial order like the order in the present case.

(9) Examining the scope of Section 21 (4) of the Act, the High Court of Madhya Pradesh observed in the matter of **Kandhilal Patel and others V. State of M.P. and others. reported in 1999 (2) JLJ 109** that the language employed in sub-Section (4) of Section 21 of the Act clearly shows the intention of the legislature. It never wanted to treat the dispute at par with an appeal under Section 91. It appears that the legislature was alive to the situation that in an appeal, a fact finding enquiry may not be made by the appellate forum, and in a case where the motion is carried, sometimes factual allegations may be made or factual disputes can be raised. The word 'dispute' in its ordinary sense would mean that the person aggrieved by an order is challenging its correctness, validity and propriety not only on the legal aspects, but even on the factual aspects as he is dissatisfied with the resolution carrying the motion. When a dispute under Section 21 (4) is raised, it cannot be decided as an appeal. The

70

party aggrieved by the resolution can challenge its correctness, as observed, on legal grounds so also on the factual aspects.

(10) Therefore, it is apparent from the language of Section 21(4) that in a dispute referred by a Sarpanch or Up-Sarpanch against whom the motion of no-confidence is carried out, every point raised by him, challenging the validity of the motion, so carried out, is to be decided by the Collector so as to result the order into finality as no further statutory remedy has been provided in the Act or the Rules against the said order passed by the Collector and if such an order is passed in a superficial manner, without assigning any reason, it cannot be sustained in the eye of law.

(11) It needs to be emphasized that the Collector, while dealing with the dispute referred to him, against carrying out of a no-confidence motion, has to record reasons as to why he is satisfied that the motion was carried out properly or why he is dissatisfied with the carrying out of the motion under challenge. The language of Section 21(4) is abundantly clear to show that the scope of interference by the Collector is not only restricted to the question of law, on which, the dispute is based, but the same also provides for a decision on question of fact, which equally affects the validity of the motion.

(12) In the present case, the order would go to show that no reasons, whatsoever, have been indicated about the satisfaction of the said motion. No grounds raised by the petitioner have been discussed by the Collector and the order has been passed. The reasons are the live links between the mind of decision taker to the controversy in question and the decision or the conclusion arrived at. Failure to give reasons amounts to denial of justice {***See Alexander Machinery Dudly Ltd. Vs. Crab Tree. 974. LCR 120: (1974 LCR 120***)}, reference made in para 10 of the judgment rendered in the matter of ***Regional Manager, UPSRTC, Etawah and others vs. Hotil Lal and another (AIR 2003 SC 1462)***.

71

(13) Since the impugned order has been passed, without assigning any reason by the Collector, the same deserves to be and is accordingly set aside. The matter is remanded back to the Collector for passing a reasoned order on each point raised in dispute referred to him by the petitioner. Since the impediment of time has been laid down by the legislature in sub-Section (4) of Section 21 of the Act, the petitioner is directed to appear before the Collector on 25th September, 2006 with a copy of this order. In the facts and circumstances of the case, there shall be no order as to cost.

Sd/-
Sunil Kumar Sinha
Judge

SUNITA/
GOWRI